

EXHIBIT 1

DECLARATION OF ASHTON WHITAKER

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

ASHTON WHITAKER, a minor, by his
mother and next friend, MELISSA
WHITAKER,

Plaintiff,

v.

KENOSHA UNIFIED SCHOOL DISTRICT
NO. 1 BOARD OF EDUCATION and SUE
SAVAGLIO-JARVIS, in her official capacity
as Superintendent of the Kenosha Unified
School District No. 1,

Defendants.

Civ. Action No. 2:16-cv-00943-PP
Judge Pamela Pepper

DECLARATION OF ASHTON WHITAKER

1. My name is Ashton (“Ash”) Whitaker. I am the plaintiff in the above-captioned action. I have actual knowledge of the matters stated in this declaration.

2. I was born on August 24, 1999. I live in Kenosha, Wisconsin with my mother, Melissa Whitaker.

3. I am a student at George Nelson Tremper High School (“Tremper”). I will begin my senior year of high school on September 1, 2016. I am ranked in the top five percent of my high school class and hope to attend the University of Wisconsin-Madison and study biomedical engineering after graduation. In school, I am involved in a lot of activities: orchestra, theater, tennis, National Honor Society, and Astronomical Society. Outside of school, I work part-time as an accounting assistant in a medical office.

4. I was designated “female” on my birth certificate, but I realized I am a boy in middle school and began to experience growing discomfort with being viewed as a girl by others.

5. At the end of eighth grade, in spring 2013, I told my parents that I am transgender and a boy. Not long after that, I told my older brothers.

6. During the 2013-2014 school year, my freshman year at Tremper, I began telling my close friends that I am a boy. At that point, I began transitioning more publicly: I cut my hair short, began wearing more masculine clothing, and began to go by a masculine name and pronouns.

7. In fall 2014, the beginning of my sophomore year, I told my classmates and teachers that I am a boy and requested that they refer to me with male pronouns and by my new name. On Christmas Day of 2014, I told my extended family that I am a boy.

8. Around the time of my public transition, I began seeing a therapist, who diagnosed me with Gender Dysphoria. In April 2016, I began seeing an endocrinologist at Children's Hospital of Wisconsin to discuss hormonal therapy. In July 2016 I started hormone replacement therapy (testosterone).

9. On August 2, 2016, I submitted a petition for a legal name change to the Kenosha County Circuit Court to change my name to my traditionally masculine first name, Ashton. I have a court date of September 15, 2016 at which I expect the petition will be granted.

10. My transition has been accepted and respected by most people at Tremper. My friends and classmates have been very supportive and treat me as a boy. To my knowledge most of my teachers also respect my gender identity. For example, at an orchestra performance on January 17, 2015, I wore a tuxedo, just like all the other boys, and was supported by my orchestra teacher, Helen Breitenbach-Cooper. It was accepted without incident and has never been a problem even amongst the audience.

11. In spring 2015, during my sophomore year, my mother and I had several meetings with my guidance counselor, Debra Tronvig. At these meetings, we asked that I be allowed to use the boys' restrooms at school. At a meeting in March 2015, I was told by Ms. Tronvig that school administrators had decided that I could only use the girls' restrooms or a gender-neutral restroom in the school's main office. This meeting was very upsetting to me. I did not want to use the girls' restroom, because I had publicly transitioned in school and using the girls' restroom would communicate to other people that I am "really" a girl—which isn't true—and should be treated like a girl. If I used the office restroom, other students and office staff would ask me questions about why I was using it. The office restroom is also far from my other classes and I would miss class time if I used it.

12. I was also worried that I would be disciplined if I used the boys' restroom, which would hurt my chances of getting into college. Because of this, I did my best to avoid using any restrooms at school for the rest of the school year.

13. In order to avoid using the restrooms, I drank less liquid than I normally would. I have been diagnosed by my pediatrician with vasovagal syncope, which means I am susceptible to fainting and/or having seizures upon certain physical or emotional triggers. If I am dehydrated, my condition is triggered, so my doctor requires that I drink 6-7 bottles of water a day and a bottle of Gatorade. I also get stress-related migraines.

14. When I avoided using the restrooms, I had more symptoms of vasovagal syncope and more migraines. I also felt increasingly depressed and anxious.

15. In July 2015, I went to Europe with my school orchestra group. I asked if I could room with boys, but my orchestra teacher, Ms. Breitenbach-Cooper, told me school administrators had decided I would have to room with girls. We were at times divided by gender

for activities and I would be grouped with girls. I found this demeaning and humiliating. During this trip, feeling a bit freer because of being in another country and knowing I was less scrutinized than at school, I began using men's restrooms. On that trip I also saw a news story about a lawsuit against the Gloucester County School District in Virginia brought by another transgender student who was not allowed to use the boys' restroom. In that story I learned that the U.S. Department of Justice had said that transgender students have the right to use restrooms in accordance with their gender identity under Title IX. I was thrilled to learn that I had this legally protected right.

16. When my junior year started in September 2015, I only used boys' restrooms. No one said anything, and for seven months, I had no issues with other students or staff when I used the restrooms. I did not discuss my decision to use the boys' restrooms with any teachers or administrators because I knew that using the boys' restrooms was my legal right.

17. One day in late February 2016, I was washing my hands in the sink in the boys' restroom when a teacher walked in who had known me my freshman year. He gave me a funny look. A week or two later, just after I finished taking the ACT test, my mom told me that administrators had decided that I would only be permitted to use the girls' or single-user gender-neutral restrooms. Never before had I felt scrutinized and degraded to such an extent in just using the boys' restroom.

18. Hearing that news, I was incredibly upset, uncomfortable, and embarrassed. I am not a girl, and because of that I hadn't used a girls' restroom in months anywhere. If I used the girls' restrooms, that would totally confuse classmates who see me as the boy that I am, and make them think that I'm not a "real" boy and they don't need to respect my identity. I knew they would look at me strangely, ask me intrusive questions, and some would probably laugh at

me and bully me. The idea of using the girls' restroom was humiliating and there was no way I could do it. If I were to use the gender-neutral restrooms, I would also stand out from everyone else with a big label on me that said "transgender." It was humiliating to think of being singled out in that way, which I knew would make other students look at me strangely, ask me intrusive questions, and some would make fun of me and bully me. Having to use a single-user restroom separate from all other students would send the message that I am so different from other students that I need to be separated from everyone else. I was also afraid of getting in trouble if I didn't go with one of the school's options. I had never experienced any disciplinary trouble at school and I was very worried about that possibility.

19. Despite these fears, for the rest of the school year, I kept using the boys' restrooms when I needed to go, because to me, the only other option was to never use any restrooms at school. With my after-school activities, a typical school day for me is about 10 hours. I also know that using the boys' restroom is my legal right. Feeling trapped and having no choice but to break the school's rules or do things I knew were putting my health at risk (trying not to drink liquids during the school day) made me more anxious and depressed. I had trouble completing my schoolwork and sleeping at night. I felt so hopeless, I even had thoughts about suicide.

20. Around March 10, 2016, my mother and I met with my counselor, Ms. Tronvig, and Holly Graf, an assistant principal. During this meeting, Ms. Graf would only call me by my birth name. She told us that I couldn't use the boys' restrooms because my gender is listed as female in the school's official records. She said they wouldn't change that unless they received legal or medical documentation. My mother explained that I was too young for transition-related surgery, but had my pediatrician fax a letter stating that I am a transgender boy and I should be

allowed to use the boys' restrooms. Despite this, I was still not allowed to use the boys' restrooms.

21. Around March 17, 2016, when I went into the boys' restroom, I saw an assistant principal, Mr. Geiger, watch me. When I exited the restroom, I saw Mr. Geiger typing an email. I assumed that he was emailing the other administrators to report me. A short time later Ms. Graf called me in to her office to meet with her, and proceeded to lecture me for half an hour about my restroom use. Ms. Graf told me that I would be subject to disciplinary action if I kept using the boys' restrooms—she said I would have to “go down to 109 or 203” which could lead to in-school suspension. 109 and 203 are discipline offices at school. She asked me why I was not using the girls' or a single-user restroom, and I told her that I wouldn't use the girls' restroom because that would not be appropriate because I'm not a girl. She asked me to compromise and use the single-user restroom in the office. I refused because it was still far from my other classes and it would still make me stand out as different from my classmates. I also told her that the school's policy violated my rights under Title IX.

22. At this meeting and in general, Ms. Graf has almost exclusively referred to me by my female birth name and female pronouns even when I asked that my new name and male pronouns be used instead. When I became upset in our March 17 meeting, she said condescendingly, using my birth name, “S-----, calm down.” I felt angry and humiliated by this and I left the office.

23. After this meeting, I started crying in the hallway. The rest of the day, I couldn't focus in any of my classes, and just kept having flashbacks about how awful that meeting was and fighting back tears. After school, I skipped work and just lay in bed, exhausted and depressed and not wanting to move, because of the stressful situation I had been forced into.

24. I continued to use the boys' restroom when necessary during the rest of the school year. I met with Ms. Graf alone or with my mother several times because I kept using the boys' restroom. The meetings with Ms. Graf felt invasive and embarrassing. I was mortified that school staff were clearly watching and reporting on my every move. Since these meetings happened during class time, I knew other students and teachers were wondering why I was getting pulled out of class so much, and I felt embarrassed having to explain it to them when they asked. I was also worried that being pulled out of class so much would hurt my performance in school. I was also worried about disciplinary action hurting my ability to get into college.

25. I also learned from my mother that the school security guards had been asked to monitor my restroom use. I felt so embarrassed and stressed by this scrutiny and surveillance.

26. On April 6, 2016, I attended a meeting with my mother, Ms. Graf, Susan Valeri from KUSD, and Richard Aiello, Tremper's principal. At this meeting, I was given the further option of using two single-gender restrooms on the opposite sides of campus. They had installed new locks and I would be the only student who had a key to open them. These restrooms were not near my classes and I would have had to miss class time to use them. I was also embarrassed frustrated at the idea of needing to be assigned personal, separate restrooms, unlike any other students at Tremper. I knew that other students would be curious and annoyed that I was the only person who had access to these locked restrooms. I knew if I used those restrooms some students would not just ask questions but talk about me, make fun of me and bully me.

27. At the April 6 meeting, I asked Ms. Valeri what the school's reason was for not letting me use the boys' restrooms that did not have anything to do with my anatomy. Ms. Valeri essentially said, "Well, we've never had a student who identifies as male but was born female." I told them that Title IX prohibits discrimination based on sex, and that this protects transgender

students and means that schools have to let students use restrooms consistent with students' gender identity. Ms. Valeri said that Title IX did not protect transgender students' access to restrooms consistent with their gender identity. When I asked Valeri to explain what she thought Title IX meant, she refused. When I asked why, she said something like, "I don't think I'm going to give you any reasons."

28. After this meeting, I continued to avoid using the restrooms as much as possible. I have never used the single-user restrooms that I was given special keys for because I did not want to call attention to myself by using them.

29. My depression, anxiety, and gender dysphoria have become worse because of these experiences of negotiating using the bathroom at school, and all the other ways that they school has refused to acknowledge or respect my gender identity and treat me differently just because I am transgender. A lot of times I didn't even want to get out of bed in the morning and go to school, even though I always used to love school. I also have experienced more migraines, fainting, and dizziness because I was attempting to avoid using any school restrooms. I considered withdrawing from Tremper and finishing high school online, but decided not to because I would miss out on my after school activities and because transferring would make me fall even more behind on classwork.

30. In March 2016, I learned that Tremper's junior prom advisor had nominated me to be on the prom court for prom king. At Tremper, nominations for prom court are based on students' community service hours.

31. Around March 22, 2016, my mom was called in to meet with Mr. Aiello and Ms. Graf. They told her that they would allow me to be a candidate for prom court, but only as prom queen, not prom king. When my mom told me about their decision, I was humiliated by the idea

of running for prom queen when my classmates know me as the boy that I am. I felt disrespected by the administration and angry that they did not seem to realize how hurtful they were being.

32. On April 4, 2016, my friends and I showed administrators a MoveOn.org petition demanding that I be allowed to run for prom king and use the boys' restrooms. The petition was signed by thousands of people around the country and many members of the Tremper community. The following day, on April 5, 2016, 70 students had a sit-in at Tremper's main office to show their support for me and for equal rights for transgender students.

33. After the sit-in and the media attention it received, I was told that I would be allowed to run for prom king after all. I was glad to have this opportunity and grateful for the support of my classmates, but I continue to feel upset about the way I was treated by the administration and the fact that they only backed down because of that public attention.

34. Throughout my time at Tremper, most of my teachers have referred to me by my male name, but since KUSD has not changed my name on official records, I have to tell my teachers at the beginning of each term about my preferred name and pronouns. Every time I have a substitute teacher, I have to tell that teacher before class starts that my real name is Ash and that they should call me by that name, not the name on the roster. Even then, some substitute teachers still refer to me by my birth name in class. Sometimes I forget to tell a substitute teacher before class starts about my name, and those teachers will almost always use my birth name in front of other students. Having to correct this in front of everyone reveals to everyone or reminds them of my birth name and is humiliating.

35. At an orchestra rehearsal at school on May 11, 2016, I was approached by the orchestra's volunteer pianist, who put her hands on my shoulders and said something like, "Ash, honey, this isn't about you, this is bigger than you. I'm praying for you." This volunteer also

created a Facebook group called “KUSD Parents for Privacy,” which has posts that are critical of transgender students’ rights and has mentioned me by name numerous times. My mother and I brought this incident to Mr. Aiello, who requested that the orchestra teacher call the volunteer and tell her not to talk to students like that. It didn’t seem like anything changed, though. That woman is still a regular volunteer with the orchestra, and I feel awkward and embarrassed and angry when she’s around, because it felt like she got away with deliberately attacking me online, even though Mr. Aiello had explicitly said that was unacceptable.

36. In May 2016, I learned from my mother that school administrators had told guidance counselors to distribute bright green wristbands to transgender students so that their use of the restrooms could be monitored more easily. This made me feel sick and scared. I told my mom there was no way I would agree to wear one, but I was afraid that the school would make me do so. I knew that wearing something like that would single me out for more questions, harassment, or even violence for being transgender.

37. From June 12-16, 2016, I participated in a five-day, school-sponsored summer orchestra camp at the University of Wisconsin-Oshkosh campus. I signed up to stay in a boys’ suite with one of my best friends, who is a boy. I was told by Ms. Breitenbach-Cooper that school administrators had decided that I had to either stay in a suite with girls or stay alone. I was definitely uncomfortable staying with girls, so I reluctantly agreed to stay in a double-bedroom suite alone so that I could participate in the program.

38. Staying in a suite alone meant that I could not socialize often with other students in the evenings, since students were not allowed to enter each other’s suites. Each evening while everyone else was having fun with their friends, I stayed in my room, either sleeping or practicing my violin. That whole trip I felt lonely and depressed, and disappointed that I wasn’t

able to share those fun experiences with my classmates and have happy memories of my last year at camp. I was also hurt and embarrassed. Even though the school did not explain why I could not stay with boys, I understood that they still did not consider me a real boy—and it was degrading and humiliating to think that my teachers and administrators were thinking of me—and no other students—in those terms.

39. I have suffered both physically and emotionally by being separated from and being treated differently than my male classmates. Physically, I have experienced dehydration, dizziness, fainting or nearly fainting, and migraines as a result of limiting my liquid intake to try not to have to use the restroom at school. I have felt increasingly depressed and anxious over the last months due to the discriminatory actions taken by Tremper's administration. These have hurt my ability to focus in class and perform well in school.

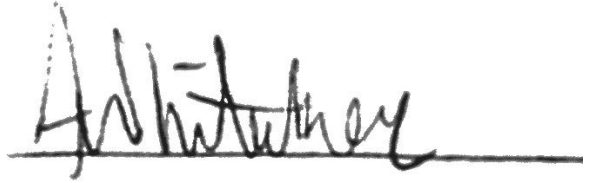
40. The level of attention and scrutiny has made me feel unsafe and scared being outside of my house. I'm constantly afraid that I will be targeted for an assault by someone who knows I am transgender. I try to avoid ever going out alone or even with just one other friend, only going out in groups, so that I'll be protected.

41. If I am not allowed to use the boys' restrooms during my senior year of high school, I know I will experience the same embarrassment, anxiety, and depression as I did last year. I am also worried that my symptoms of vasovagal syncope—fainting and migraines—will continue to get worse. I am continuing to think seriously about transferring to an online school if Tremper and KUSD keep refusing to respect my identity and doing things that single me out and label me as different from all the other boys.

42. I just want to live as who I am—a boy—and go to school without being harassed, discriminated against, demeaned, and humiliated by my school.

Pursuant to 8 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on August 14, 2016

A handwritten signature in black ink, appearing to read "Ashton Whitaker", is written over a solid horizontal line.

By:

Ashton Whitaker